

UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES,

Plaintiffs in Error,

vs.

JOHN M. McDONALD,

Defendant in Error.

*In Error to the Circuit Court of the United States, for the
District of Montana.*

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*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

JOHN M. McDONALD,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

Be it remembered, that on the 13th day of June, 1893, the plaintiff above named filed his petition herein, which said petition is in the words and figures as follows, to-wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

JOHN M. McDONALD,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

Petition.

To the Honorable the Judges of the Circuit Court of
the United States for the Ninth Circuit, District
of Montana.

The said John M. McDonald, seeking redress in
respect of his certain claim against the United States,
and for his petition in that behalf, says:

That his full name is John M. McDonald, and that
he is a resident of the State of Montana, and of the
City of Helena in said State.

That his claim is for clerical services in the office of the United States Attorney for the District of Montana, all in the years 1891 and 1892.

That pursuant to authority from the Attorney-General of the United States therefor, plaintiff began said services on or about the twelfth day of March, 1891, under an appointment by the said United States District Attorney, at an annual salary of fifteen hundred dollars, and continued said services under said appointment, and at the request of said Attorney-General, and the said United States District Attorney, up to and including the thirty-first day of December, 1891.

That his said salary for the time last aforesaid is twelve hundred and thirty-seven and 50-100 dollars, no part of which has been paid.

That pursuant to authority from the said Attorney-General, therefor, plaintiff continued in said service from January first, 1892, to December 31st, 1892, both dates inclusive, under an appointment by the said Attorney-General, and the said United States District Attorney; and at an annual salary of fifteen hundred dollars for services as a clerk in the office of the said United States District Attorney, no part of which has been paid.

That all of said services have been rendered in behalf of the defendant, and at the request of the said United States District Attorney, and the said Attorney-General, and are reasonably worth the amount claimed therefor, that defendant, through its said officers, have accepted, acknowledged and recognized said services. That the total amount of his said claim is two thou-

sand and seven hundred and thirty-seven and 50-100 dollars, and the same, and the whole thereof, remains wholly unpaid.

That the said twelve hundred thirty-seven and 50-100 dollars for 1891 constituted a part of the office expenses, clerk hire, etc., of the said United States District Attorney for that year, which part was included in the disallowances by the First Comptroller of the Treasury Department of the United States, in auditing the accounts of the office of the said United States District Attorney, for said year; that the gross emoluments of the said office for that year was about nine thousand six hundred and eighty-seven and 80-100 dollars. That the gross emoluments of the said office for the year 1892 was about eleven thousand dollars.

That the amount due plaintiff for the year 1892, aforesaid, was disallowed by the said Comptroller in auditing the accounts of the said office of the said United States District Attorney for 1892.

That no assignment or transfer of plaintiff's claim or of any part thereof, or interest therein has been made; that said claimant is justly entitled to the amounts, to-wit: twelve hundred thirty-seven and 50-100 dollars, and fifteen hundred dollars herein claimed from the United States, after allowing all just credits and set-offs; that said claimants has at all times borne true allegiance to the Government of the United States, and has not, in any way, voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in this petition to be true.

And prays this Honorable Court for a judgment or decree upon the facts and law.

GEORGE F. SHELTON and
J. A. CARTER,

Attys. for Plaintiff.

STATE OF MONTANA, }
County of Lewis and Clarke. } ss.

John M. McDonald, being duly sworn, says: I am the plaintiff above named. I have read the foregoing complaint and know the contents thereof; the facts therein stated are true of my own knowledge, except such facts as are therein stated to be on information and belief, and as to such matters I believe the same to be true.

JOHN M. McDONALD.

Subscribed and sworn to before me, this 13th day of June, 1893.

(Notarial seal.)

R. R. PURCELL,
Notary Public.

[Endorsed]: [Title of Court and cause.] Petition.
Filed, June 13, 1893. Geo. W. Sproule, Clerk.

That, thereafter, to-wit: on the 26th day of June, 1893, proof of service of petition on defendant was duly filed, which is in the words and figures as follows, to-wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

JOHN M. McDONALD,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

Affidavit of Service of Copy of the Petition Herein.

STATE OF MONTANA, }
County of Lewis and Clarke. } ss.

J. A. Carter, being first duly sworn, says he is one of the attorneys for the plaintiff in the above entitled action;

That on the thirteenth day of June, 1893, he served a copy of the petition filed herein on said date, upon the Honorable E. D. Weed, the District Attorney of the United States, in the District of Montana, and that on the fourteenth day of June, 1893, affiant mailed a copy of said petition by registered letter to the Attorney-General of the United States.

J. A. CARTER.

Subscribed and sworn to before me, this 26th day of June, 1893.

(Seal.)

C. B. NOLAN,

Notary Public in and for Lewis and Clarke
County, Montana.

[Endorsed]: [Title of Court and Cause.] Proof of Service. Filed June 26, 1893. Geo. W. Sproule, Clerk.

And, thereafter, to-wit: on the 21st day of August, 1893, the default of the said defendant herein was duly entered, in the words and figures as follows, to-wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

JOHN M. McDONALD,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

In this action the defendant, the United States of America, having been regularly served with process, and having failed to appear and answer the plaintiff's complaint on file herein, and the time allowed by law for answering having expired, the default of said defendant, The United States, in the premises, is hereby duly entered according to law.

Attest my hand and the seal of said court, this 21st day of August, A. D. 1893.

(Seal.)

GEO. W. SPROULE, Clerk.

And, thereafter, to-wit: on the 28th day of August, in open court, the following proceedings were had and entered of record herein in the words and figures following, to-wit:

[Title of Court and Cause.]

IN OPEN COURT.

Order.

On motion of E. D. Weed, United States Attorney the default of defendant heretofore entered, is hereby set aside, and by consent defendant granted until Saturday, September 2nd, 1893, to file an answer herein.

And, thereafter, to-wit: on the 2nd day of September, 1893, the answer of defendant was duly filed herein, which said answer is in the words and figures as follows, to-wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

JOHN M. McDONALD,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

Answer.

To the Honorable, the Judges of the Circuit Court of the United States, for the Ninth Judicial Circuit, District of Montana.

The defendant, the United States, by and through its Attorney for the District of Montana, answering the petition of the plaintiff in the above entitled action admits that plaintiff's name is John M. McDonald, and that at the time his said petition was

filed herein, he was a resident of the State of Montana, and of the City of Helena, in said State, admits that by authority of the Attorney-General of the United States, plaintiff performed certain clerical services in the office of the United States District Attorney for said district, commencing on or about the 12th day of March, A. D. 1891, at an annual salary of fifteen hundred (\$1500) dollars, and continuing said services up to the first day of December, A. D. 1891, and not longer.

Defendant, by its said attorney for the district aforesaid, who appears for and on behalf of the defendant in this action, alleges that on said first day of December, A. D. 1891, the said plaintiff, John M. McDonald, was duly appointed by the Attorney-General of the United States as Assistant United States District Attorney for said district at a salary of twelve hundred (\$1200) dollars per annum; and alleges that said appointment at an annual salary of twelve hundred (\$1200) dollars, continued from said first day of December, A. D. 1891, up to the first day of January, A. D. 1893, when said appointment and term of service, as said Assistant United States District Attorney for the District of Montana, at the compensation aforesaid, was terminated by direction of the Attorney-General of the United States.

Admits, that the said sum of twelve hundred thirty-seven and fifty-hundredths dollars (\$1237.50), claimed by plaintiff herein, as salary for clerk hire in the office of the District Attorney aforesaid, was disallowed by the First Comptroller of the Treasury Department of the United States, in auditing the accounts of the office of the United States District At-

torney for Montana, for said year; and admits plaintiff's account for fifteen hundred dollars (\$1500), for alleged services as a clerk in the office of the United States District Attorney for Montana, during the year 1892, was disallowed by the First Comptroller of the Treasury Department of the United States, aforesaid, for the reason that from the first day of December, 1891, as hereinbefore set forth, up to the first day of January, 1893, the said plaintiff was a duly authorized, appointed and acting Assistant United States District Attorney for the District of Montana, under a salary of twelve hundred dollars (\$1200) per annum, which said salary, during the whole of said time, was paid by the defendant to the plaintiff in full.

Wherefore, the defendant prays this Honorable Court for a judgment or decree upon the facts and law.

ELBERT D. WEED,

United States Attorney, District of Montana.

STATE OF MONTANA,)
County of Lewis and Clarke.) ss.

Elbert D. Weed, being duly sworn, says: That he is the District Attorney for the United States, for the District of Montana; that he makes this verification for and on behalf of the United States; that he has read the above and foregoing answer, and knows the contents thereof, and that the facts therein stated are true, to the best knowledge, information and belief of the said attorney.

ELBERT D. WEED.

Subscribed and sworn to before me this 2d day of September, A. D. 1893.

(Seal.) SHERWOOD WHEATON,
Notary Public Lewis and Clarke county, Montana.

Service admitted and copy received this 2d day of Sept., 1893.

J. A. CARTER,
Attorney for Plaintiff.

[Endorsed]: [Title of Court and Cause.] Answer.
Filed Sept. 2, 1893. Geo. W. Sproule, Clerk.

And thereafter, to-wit: on the 4th day of December, 1893, the following further proceedings were had, and entered of record herein, in the words and figures as follows:

[Title of Court and Cause.]

IN OPEN COURT.

Ordered that this cause be passed until called up.

And thereafter, to-wit: on the 2d day of April, 1894, the following proceedings were had, and entered of record herein, in the words and figures as follows, to-wit:

[Title of Court and Cause.]

IN OPEN COURT.

Ordered that this cause be passed.

And thereafter, to-wit: on the 24th day of May, 1894, the following further proceedings were had and entered of record herein, in the words and figures, as follows, to-wit:

[Title of Court and Cause.]

IN OPEN COURT.

Ordered that this cause be set for trial June 6th, 1894.

And thereafter, to-wit: on the 6th day of June, 1894, the following further proceedings were had and entered of record herein, in the words and figures following, to-wit: April Term, A. D. 1894, Wednesday, June 6th, 1894, 10 A. M. Court convened pursuant to adjournment.

Present: Honorable HIRAM KNOWLES, United States District Judge, for the District of Montana.

No. 280. John M. McDonald vs. United States. Cause submitted by counsel for plaintiff and defendant upon documentary evidence, and taken under advisement.

And thereafter, to-wit: on the 19th day of November, 1894, the following further proceedings were had and entered of record herein, in the words and figures following, to-wit: November Term, A. D. 1894, Monday, Nov. 19, 1894, 10 A. M. Court convened pursuant to adjournment.

Present: Honorable HIRAM KNOWLES, United States District Judge, for the District of Montana.

No. 280. John M. McDonald *vs.* the United States.

Order for Judgment.

This cause heretofore submitted to the court for decision and judgment came on regularly this day, and after due consideration, it is ordered that judgment be entered in favor of plaintiff and against defendant for the sum of twelve hundred and thirty-seven and 50-100 dollars, and that judgment be entered accordingly.

And on said 19th day of November, 1894, the opinion of the Court was duly filed herein, which said opinion is in the words and figures, as follows, to-wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

JOHN M. McDONALD,

Plaintiff, }

vs.

THE UNITED STATES,

Defendant. }

Opinion.

This is an action on the part of the petitioner against the United States to recover the sum of two thousand seven hundred and thirty-seven and 50-100 dollars.

In an Act entitled "An Act to provide for the bringing of suits against the Government of the United States," Sup. to the Rev. Stats. U. S., p. 559, it

is provided, that the Court of Claims shall have jurisdiction to hear and determine the following matters: First—All claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity or admiralty, if the United States were suable.”

Sec. 2 of said Act provides: “That the District Courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the Circuit Courts of the United States shall have such concurrent jurisdiction in all cases where the amount of such claims exceeds one thousand dollars, and does not exceed ten thousand dollars.”

“All causes brought and tried under the provisions of this Act shall be tried by the court without a jury.”

In proceeding in the District and Circuit Courts under this Act they “shall be governed by the law now in force in so far as the same is applicable and not inconsistent with the provisions of this Act, and the course of procedure shall be in accordance with the established rules of said respective courts, and of such additions and modifications thereof as said courts may adopt.”

In his petition the plaintiff sets forth, "That his claim is for clerical services in the office of the United States Attorney, for the District of Montana, all in the years 1891 and 1892."

"That pursuant to authority from the Attorney-General of the United States thereof, plaintiff began said services on or about the twelfth day of March, 1891, under an appointment by the said United States District Attorney, at an annual salary of fifteen hundred dollars, and continued said services under said appointment, and at the request of said Attorney-General and the said United States, up to and including the thirty-first day of December, 1891."

"In the answer of the United States, filed by United States District Attorney Weed, the United States admits that by authority of the Attorney-General of the United States, plaintiff performed certain clerical services in the office of the United States District Attorney for said district, commencing on or about the 12th day of March, A. D. 1891, at an annual salary of fifteen hundred (\$1500.00) dollars, and continuing said services up to the first day of December, A. D. 1891, and not longer."

There would not appear, considering the ordinary rules of pleading, that there was any issue of fact to be tried upon the issue here presented.

The ground for the second claim is thus set forth in the petition:

"That pursuant to authority from the said Attorney-General therefor, plaintiff continued in said services from January first, 1892, to December 31st, 1892, both dates inclusive, under an appointment by the said

Attorney-General, and the said United States District Attorney, and at an annual salary of fifteen hundred dollars for services as clerk in the office of the said United States District Attorney, no part of which has been paid.”

Instead of meeting this allegation by a direct denial the United States Attorney sets forth his affirmative matter:

“Defendant, by its said attorney for the district aforesaid who appears for and on behalf of the defendant in this action alleges that on said first day of December, A. D. 1891, the said plaintiff John M. McDonald, was duly appointed by the Attorney-General as Assistant United States District Attorney for said district at a salary of twelve hundred (\$1200) dollars per annum, and alleges that said appointment at the annual salary of twelve hundred (\$1200) dollars continued from said first day of December, A. D. 1891, up to the first day of January, A. D. 1893, when said appointment and term of service as said Assistant United States District Attorney for the District of Montana, at the compensation aforesaid, was terminated by direction of the Attorney-General of the United States.”

While these allegations in the answer do not meet the issue presented in the petition directly, I think they were intended to do so indirectly. That is, it was sought to allege matter which would be inconsistent with the allegations in the petition. As a matter of fact, however, there is not any incompatibility in plaintiff holding both the position of clerk in the office of the United States District Attorney, and that of assistant to the said attorney. Neither office has a

salary of twenty-five hundred dollars per annum attached thereto.

Section Six, of the aforesaid Act, giving jurisdiction in such cases as this to the Circuit Court, Sup. to Rev. Stat. of the U. S. p. 561, contains this provision: "Provided, that should the District Attorney neglect or refuse to file the plea, answer or demurrer or defense as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises, but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court."

Perhaps under the provisions of this statute the court is called upon to examine into the evidence presented in the case.

The matter under consideration is the second claim, and if the United States had a defense to the same, the answer does not present it.

Certain letters from the departments of the general Government are presented in evidence for the consideration of the court, as bearing upon the issues presented.

On the 10th of February, 1891, the United States Attorney-General wrote to District Attorney Weed:

"On the the 26th *ultimo* you ask for the appointment of an assistant attorney, at a compensation to be allowed from the emoluments of your office in excess of your maximum. Whenever an appointment is made in the manner mentioned, it is a difficult matter to get a settlement through the accounting officers of the Treasury. The better way seems to

be that you appoint a person for the discharging of clerical services in your office, at a compensation not exceeding \$1500, such person to be an attorney-at-law who can assist you in the court. If you are willing to appoint Mr. McDonald, his appointment as an assistant is authorized upon the further condition that he is to understand that he can have no account against the United States for services, but is to look exclusively to you for compensation."

This letter seems to have been the one acted upon, and under which plaintiff was appointed a clerk for Mr. Weed, on the 12th day of March, 1891.

Under this appointment, from the allegations in the petition it appears petitioner served as clerk up to the 31st day of December, 1891.

It was suggested when this case was presented to the court, that this letter shows that the services plaintiff rendered as clerk was to be paid by District Attorney Weed. I do not think that is a proper construction of that letter. There is a difference between an assistant to a District Attorney and one performing clerical work for such an attorney. From the language used in Sec. 363, Rev. Stat., it would appear that when an additional attorney for the United States is employed, he should be termed an assistant to the District Attorney, or an Assistant District Attorney. If the Attorney-General understood, when he suggested that the District Attorney should employ some one to do clerical services, that he should be his assistant attorney, he would not have suggested that he pay him fifteen hundred dollars a year, and take it out of his own salary. If the District Attorney was to engage an assistant

and pay him out of his own salary, the Attorney-General would have left the salary for the assistant to be fixed by the District Attorney himself. I have presented this view of the said letter of the Attorney-General, because I may wish to refer to it hereafter.

In regard to the appointment of plaintiff for the year 1892, as a clerk, there is no evidence that Mr. Weed gave him the appointment. It is alleged that he was appointed both by the Attorney-General and Mr. Weed. On March 30, 1892, plaintiff was appointed an assistant to the District Attorney, District of Montana.

In the letter making the appointment the Attorney-General says:

“This appointment is in lieu of the one dated December 1st, 1891, which is hereby revoked, as are also all other appointments, and letters authorizing the payment to you of extra compensation.”

The letter appointing plaintiff on December 1st, 1891, is not in the record.

Whatever authority District Attorney Weed had to appoint plaintiff to a clerical position by virtue of the letter of March 30th, 1891, was hereby revoked.

That this was the understanding, I think fully appears from a letter from the Attorney-General dated May 5, 1892. In this he says: “In answer to your application of April 22, 1892, you will place this letter in the hands of the United States Attorney, E. D. Weed, as his authority for allowing you compensation per annum of \$800—beginning with January 1, 1892, for services rendered to him as clerk in his office, payable from the emoluments of the District Attorney.”

Whether or not District Attorney Weed made him this allowance does not appear in the petition, and it does not appear from any accounts in evidence presented to the Auditor's department of the general Government.

The claim seems to have been made for fifteen hundred dollars for clerk hire for plaintiff in District Attorney Weed's account for 1892. But there was evidently no authority shown for appointing plaintiff clerk for that year at that salary, received from the Attorney-General.

It appears from the reports from the Treasury Department, Comptroller's office, that plaintiff presented claims for allowance in the United States District Attorney's office for both the years 1891 and 1892.

It would appear from a letter from the First Comptroller that the vouchers furnished by the said District Attorney Weed for these years from plaintiff was for an assistant to the said District Attorney. It is evident from this letter that plaintiff and District Attorney Weed considered this a mistake. Considering the first claim for twelve hundred and thirty-seven dollars, there is an implied authority in the letter of March 30th, 1891, given to Mr. Weed, as United States District Attorney, to appoint plaintiff his clerk at a salary of fifteen hundred dollars per year. Whether that letter, however, gives this authority or not it is admitted in the pleadings by the answer of the United States that he was appointed under such authority and served under that appointment up to December 31st, 1891.

In the case of *United States vs. MacDaniel*, 7 Pet., 1, the Supreme Court said:

“It is insisted that as there was no law which authorized the appointment of the defendant his services can constitute no legal claim for compensation, though it might authorize the equitable interposition of the Legislature. That usage, without law or against law, can never lay the foundation of a legal claim, and none other can be set off against a demand by the Government. A practical knowledge of the action of every one of the great departments of the Government must convince every person that the head of a department in the distribution of its duties' and responsibilities is often compelled to exercise this discretion. He is limited in the exercise of its powers of the law; but it does not follow that he must show a statutory provision for everything he does; no government could be administered on such principles.”

It is evident from the views expressed throughout this decision that the Attorney-General had the right to authorize District Attorney Weed to employ plaintiff as a clerk, and that he having done so under such authority, plaintiff is entitled to the compensation provided in the employment. It is admitted that had the said District Attorney employed plaintiff as an assistant attorney under the terms of said letter, plaintiff would have had to look to Mr. Weed for the payment for his services. If plaintiff had brought his second claim within the authority conveyed in the letter of May 5, 1892, then this court might be called upon to determine whether or not he was entitled to the same, considering the provisions of Sec. 1765, Rev. Stat. In construing this very statute, Chief Justice

Taney, in the case of *Converse vs. The United States*, 21 Howard, 463, said, (referring to the Acts of Congress which are embodied in said section, 1765): "But they can by no fair interpretation be held to embrace an employment which has no affinity or connection either in its character or by law or usage with the line of its official duty, and where the services to be performed is of a different character and for a different place, and the amount of compensation regulated by law."

This language was referred to in the case of *United States vs. King*, 147, U. S., p. 680, and recognized as the position of the Supreme Court on this point.

If this matter had been properly presented to the court, it would have had to determine whether or not the duties of a clerk in a United States District Attorney's office had any affinity or connection either in its character or by law or usage with that of an assistant to a United States District Attorney.

It is a question not free from difficulty. There are some duties undoubtedly expected of and demanded of a clerk in a lawyer's office that it would not be expected a mere assistant would undertake. It is apparent, however, from the letter of the Attorney-General, which seems to have been the authority under which it is claimed plaintiff was appointed clerk for the said District Attorney, that it was expected that plaintiff would to some extent perform the services of an assistant to District Attorney Weed.

There seems to be a claim that for whatever plaintiff is entitled to can be paid only out of the emoluments of District Attorney Weed's office, and there not being emoluments to pay him after paying District Attorney

Weed his maximum allowance and other items charged in his account, owing to the disallowances of certain items in said District Attorney's accounts, he cannot recover. This does not appear to have been the contract with plaintiff, neither the petition or answer set up any such contract. If there was any such contract the claim of plaintiff for services should not have been disallowed without any conditions. There was some \$2010 of suspended items in the account of District Attorney Weed which might in time be allowed. Some of the suspended or disallowed charges, as a matter of law, Mr. Weed might be entitled to. What he claimed as gross emoluments was \$9687.80 for the year 1891. This more than covered all charges he made for expenses.

For the year 1892 plaintiff was paid a salary of \$1200 per annum as assistant to the District Attorney.

The court finds as follows:

First—That from the 12th of March, 1891, to the 31st day of December, 1891, plaintiff performed services for the United States as clerk in the office of the United States District Attorney for the District of Montana.

That he was employed to perform said services for the United States by E. D. Weed, the United States District Attorney for the District of Montana, and his salary was fixed at \$1500 per annum. That said Weed was duly authorized to so employ plaintiff at said salary.

Second—That plaintiff was not employed in said capacity as a clerk after December 31st, 1892, by said Weed under any authority from the Attorney-General of the United States.

As a Conclusion of Law:

I find that plaintiff is entitled to a judgment against the United States for the sum of twelve hundred and thirty-seven and 50-100 (\$1237.50) dollars.

Opinion. Filed November 19, 1894.

And thereafter, to-wit: on the 19th day of November, 1894, the following further proceedings were had and entered of record herein in the words and figures following, to-wit:

[Title of Court and Cause.]

IN OPEN COURT.

On motion of U. S. District Attorney, the attorney for the plaintiff consenting, a stay of proceedings herein granted for sixty days.

And thereafter, to-wit: on the 19th day of December, 1894, the judgment of the court was duly entered herein in the words and figures as follow, to-wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

JOHN M. McDONALD,

Plaintiff,

vs.

UNITED STATES,

Defendant.

Judgment.

Be it remembered, that the above cause came on to be tried on the sixth day of June, 1894, before the

Court sitting without a jury; a trial by jury having been expressly waived, the plaintiff appearing by his counsel, and the U. S. District Attorney for the District of Montana, appearing on behalf of the defendant, and evidence was offered on behalf of plaintiff, and the case was argued by counsel, and submitted to the Court for adjudication and determination; and thereupon, on the 19th day of November, 1894, the Court filed its opinion in writing, and its findings of fact and conclusions of law, and the law in the premises being understood by the Court, it is hereby ordered and adjudged, that the plaintiff do have judgment against the defendant as found in said findings of facts and conclusions of law.

Wherefore, by reason of the law and the premises, it is ordered and adjudged that the plaintiff, John M. McDonald, do have and recover of, and from the defendant, the sum of \$1237.50, together with plaintiff's costs taxed and allowed at the sum of \$9.65.

Judgment rendered this 19th day of December, 1894.

Judgment entered Dec. 19th, 1894.

(Seal.)

GEO. W. SPROULE,
Clerk.

Attest, a true copy of judgment.

(Seal.)

GEO. W. SPROULE,
Clerk.

*In the Circuit Court of the United States, Ninth Judicial
Circuit, in and for the District of Montana.*

JOHN M. McDONALD,

vs.

THE UNITED STATES.

} No. 280.

Certificate to Judgment Roll.

George W. Sproule, Clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, District of Montana, do hereby certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above-entitled action.

Attest: my hand and the seal of said Circuit Court,
this 19th day of Dec., 1894.

(Seal.)

GEORGE W. SPROULE,

Clerk.

By

Deputy Clerk.

And on the 3rd day of January, 1895, the following further proceedings were had and entered of record herein in the words and figures as follows, to-wit:

[Title of Court and Cause.]

IN OPEN COURT.

Bill of exceptions as presented, signed and allowed and filed this day.

Said bill of exceptions being in the words and figures as follows, to-wit:

*In the Circuit Court of the United States, Ninth Judicial
Circuit, District of Montana.*

JOHN M. McDONALD,	Plaintiff,	}
vs.		
THE UNITED STATES,	Defendant.	}

Bill of Exceptions.

Be it remembered, that on the 13th day of June, 1893, the plaintiff herein, John M. McDonald, filed his petition in this cause in the words and figures following, to-wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

JOHN M. McDONALD,	Plaintiff,	}
vs.		
THE UNITED STATES,	Defendant.	}

Petition.

To the Honorable the Judges of the Circuit Court of the United States, for the Ninth Circuit, District of Montana.

The said John M. McDonald, seeking redress in respect of his certain claim against the United States, and for his petition in that behalf, says:

That his full name is John M. McDonald, and that he is a resident of the State of Montana, and of the City of Helena, in said state.

That his claim is for clerical services in the office of the United States Attorney, for the District of Montana, all in the years 1891 and 1892.

That pursuant to authority from the Attorney-General of the United States, therefor, plaintiff began said services, on or about the twelfth day of March, 1891, under an appointment by the said United States District Attorney, at an annual salary of fifteen hundred dollars, and continued said services under said appointment, and at the request of said Attorney-General and the said United States District Attorney, up to, and including the thirty-first day of December, 1891.

That his said salary for the time last aforesaid, is twelve hundred and thirty-seven and 50-100 dollars, no part of which has been paid.

That pursuant to authority from the said Attorney-General therefor, plaintiff continued in said service from January first, 1892, to December 31st, 1892, both dates inclusive, under an appointment by the said Attorney-General, and the said United States District Attorney; and at an annual salary of fifteen hundred dollars for services as a clerk in the office of the said United States District Attorney, no part of which has been paid.

That all of said services have been rendered in behalf of the defendant, and at the request of the said United States District Attorney and the said Attorney-General, and are reasonably worth the amount claimed therefor; that defendant through its said officers have accepted, acknowledged and recognized said services; that the total amount of his said claim is two thousand and seven hundred and thirty-

seven and 50-100 dollars, and the same and the whole thereof remains wholly unpaid.

That the said twelve hundred thirty-seven and 50-100 dollars for 1891, constituted a part of the office expenses, clerk hire, etc., of the said United States District Attorney for that year, which part was included in the disallowances by the First Comptroller of the Treasury Department of the United States, in auditing the accounts of the office of the said United States District Attorney for said year; that the gross emoluments of the said office for that year was about nine thousand six hundred and eighty-seven and 80-100 dollars; that the gross emoluments of the said office for the year 1892, was about eleven thousand dollars.

That the amount due plaintiff for the year 1892, aforesaid, was disallowed by the said Comptroller in auditing the accounts of the said office of the said United States District Attorney for 1892.

That no assignment or transfer of plaintiff's claim or of any part thereof, or interest therein has been made; that said claimant is justly entitled to the amounts to-wit: twelve hundred thirty-seven and 50-100 dollars, and fifteen hundred dollars herein claimed from the United States, after allowing all just credits and set-offs; that said claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said government, and that he believes the facts as stated in this petition to be true.

And prays this Honorable Court for a judgment or decree upon the facts and law.

GEORGE F. SHELTON and
J. A. CARTER,

Attys. for Plaintiff.

STATE OF MONTANA, }
County of Lewis and Clarke. } ss.

John M. McDonald, being duly sworn, says: I am the plaintiff above named. I have read the foregoing complaint and know the contents thereof; the facts therein stated are true of my own knowledge except such facts as are therein stated to be on information and belief, and as to such matters I believe the same to be true.

JOHN M. McDONALD.

Subscribed and sworn to before me this 13th day of June, 1893.

(Notarial Seal.)

R. R. PURCELL,
Notary Public.

[Endorsed]: [Title of Court and Cause.] Petition filed June 13, 1893. Geo. W. Sproule, Clerk.

That on the 2nd day of September, 1893, the defendant, by its attorney, Elbert D. Weed, United States Attorney for the District of Montana, filed its answer herein in the words and figures following, to-wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

JOHN M. McDONALD,	} Plaintiff,
vs.	} Defendant.
THE UNITED STATES,	

Answer.

To the Honorable the Judges of the Circuit Court of
the United States, for the Ninth Judicial Circuit,
District of Montana:

The defendant, the United States, by and through its attorney for the District of Montana, answering the petition of the plaintiff in the above-entitled action, admits that plaintiff's name is John M. McDonald; and that at the time his said petition was filed herein, he was a resident of the State of Montana, and of the City of Helena, in said State; admits that by authority of the Attorney-General of the United States, plaintiff performed certain clerical services in the office of the United States District Attorney for said district, commencing on or about the 12th day of March, A. D. 1891, at an annual salary of fifteen hundred (\$1500) dollars, and continuing said services up to the first day of December, A. D. 1891, and not longer.

Defendant, by its said attorney for the district aforesaid, who appears for and on behalf of the defendant in this action, alleges that on said first day of December, A. D. 1891, the said plaintiff, John M. McDonald, was duly appointed by the Attorney-General of the United States, as Assistant United States

District Attorney for said district, at a salary of twelve hundred (\$1200) dollars per annum; and alleges that said appointment, at the annual salary of twelve hundred (\$1200) dollars, continued from said first day of December, A. D. 1891, up to the first day of January, A. D. 1893, when said appointment and term of service, as said Assistant United States District Attorney for the District of Montana, at the compensation aforesaid, was terminated by direction of the Attorney-General of the United States.

Admits that the said sum of twelve hundred thirty-seven and fifty-hundredths dollars (\$1237.50) claimed by plaintiff herein, as salary for clerk hire in the office of the District Attorney aforesaid, was disallowed by the First Comptroller of the Treasury Department of the United States, in auditing the accounts of the office of the United States District Attorney for Montana for said year; and admits plaintiff's account for fifteen hundred dollars (\$1500) for alleged services as a clerk in the office of the United States District Attorney for Montana during the year 1892 was disallowed by the First Comptroller of the Treasury Department of the United States aforesaid, for the reason that, from the first day of December, 1891, as hereinbefore set forth, up to the first day of January, 1893, the said plaintiff was a duly authorized, appointed and acting Assistant United States District Attorney for the District of Montana, under a salary of twelve hundred dollars (\$1200) per annum, which said salary, during the whole of said time, was paid by the defendant to the plaintiff in full.

Wherefore, the defendant prays this Honorable Court for a judgment or decree upon the facts and law.

ELBERT D. WEED,

United States Attorney, District of Montana.

STATE OF MONTANA,)
County of Lewis and Clarke.) ss.

Elbert D. Weed, being duly sworn, says: That he is the District Attorney for the United States, for the District of Montana; that he makes this verification for and on behalf of the United States; that he has read the above and foregoing answer, and knows the contents thereof, and that the facts therein stated are true to the best knowledge, information and belief of the said attorney.

ELBERT D. WEED.

Subscribed and sworn to before me this 2d day of September, A. D. 1893.

(Seal.)

SHERWOOD WHEATON,

Notary Public Lewis and Clarke County, Montana.

Service admitted and copy received this 2d day of Sept., 1893.

J. A. CARTER,

Attorney for Plaintiff.

[Endorsed]: [Title of Court and Cause.] Answer.
Filed Sept. 2, 1893. Geo. W. Sproule, Clerk.

And thereafter, to-wit: on the 6th day of June, 1894, the said cause coming on regularly for trial, the same was tried by the Court without a jury, and to maintain the issues on his part to be maintained, the plaintiff offered in evidence the following letters and documents, to-wit:

Department of Justice,
District of Montana,
Helena, Montana, January 26th, 1891.

The Attorney-General,
Washington, D. C.

Sir: Your favor of January 21st, "A. G. 2901-89," stating that you would be glad to appoint an assistant attorney for this district were the appropriations at your command sufficient for that purpose, is received. I regret exceedingly that such is the case, as the business of the United States is increasing so fast as to be beyond any power to give it proper attention. I have to request that you appoint Mr. John M. McDonald as my assistant, and that the compensation be allowed from the emoluments of my office in excess of the maximum.

Very respectfully,

E. D. WEED.

Department of Justice,
Washington, D. C., February 10th, 1891.
H. H. 2901-1889.

E. D. Weed, Esq.,
United States Attorney,
Helena, Montana.

Sir: On the 26th ultimo you ask for the appointment of an assistant attorney at a compensation to be

allowed from the emoluments of your office in excess of your maximum. Whenever an appointment is made in the manner mentioned it is a difficult matter to get a settlement through the accounting officers of the Treasury. The better way seems to be that you appoint a person for the discharge of clerical services in your office at a compensation not exceeding \$1500, such person to be an attorney-at-law who can assist you in the courts. If you are willing to appoint Mr. McDonald, his appointment as an assistant is authorized upon the further condition that he is to understand that he can have no account against the United States for services, but is to look exclusively to you for compensation.

Very respectfully,

W. H. H. MILLER,
Attorney-General.

Department of Justice,
Washington, D. C., March 30, 1892.

Sir: You are hereby appointed an assistant to the Attorney of the United States for the District of Montana, with compensation at the rate of twelve hundred dollars (\$1200) per annum, to be computed from December 1, 1891. This appointment is in lieu of the one dated December 1, 1891, which is hereby revoked, as are also all other appointments and letters authorizing the payment to you of extra compensation. This appointment is made subject to any changes which may be made in these offices by this Department.

Execute the customary oath of office and forward the same to this Department without delay.

Very respectfully,

W. H. H. MILLER,

Attorney-General.

John M. McDonald, Esq.,

Through Elbert D. Weed, Esq.,

United States Attorney, Helena, Montana.

Treasury Department,

First Controller's Office,

Washington, D. C., May 2nd, 1892.

John M. McDonald, Esq., Helena, Montana.

Sir: Your communication of the 19th ultimo relative to the subject matter is received. In answer thereto I beg leave to inform you that expenditures for clerk hire, office expenses, etc., can only be made out of the official emoluments of the U. S. Attorney's office. Nothing can be paid direct from the U. S. Treasury for such purposes. As Mr. Weed, the attorney, did not reach his maximum personal compensation by \$162.10, you will readily see that nothing can be allowed you by this office. Respectfully yours,

J. R. GARRISON,

Acting First Comptroller, L. C. F.

Department of Justice,

Washington, D. C., May 5, 1892.

John M. McDonald, Esq.,

Assistant U. S. Attorney, Helena, Montana.

Sir: In answer to your application of April 22, 1892, you will place this letter in the hands of the

United States Attorney, E. D. Weed, as his authority for allowing you a per annum compensation of \$800, beginning with January 1st, 1892, for services rendered to him as a clerk in his office, payable from the emoluments of the District Attorney.

Very Respectfully,

W. H. H. MILLER,
Attorney-General.

Treasury Department,

First Comptroller's Office,

Washington, D. C., June 18, 1892.

John M. McDonald, Esq.,

Assistant U. S. Attorney, Helena, Montana.

Sir: In answer to your communication of the 11th instant, I beg leave to state that the gross earnings of the Attorney's office of the District of Montana for the calendar year 1891 were \$9966.20. The net earnings for the same period were \$5847.90. The office expenses, clerk hire, etc., same period were \$3307.50, of which amount \$1297.50 were disallowed, made up as follows:

Assistant Attorney McDonald, \$1237.50; Miss Bowers, \$60.00.

There was also disallowed or suspended in his fee accounts the sum of \$2288.30, of which amount \$170 have since been allowed.

RECAPITULATION.

Gross earnings from January 1, to December 31st, 1891,	\$9966 20
Personal compensation received	
by attorney,	\$5837 90
Allowed for clerk hire, office expenses, etc.,	\$2010 00
Outstanding disallowances and suspensions,	\$2118 30
	<hr/>
	\$9966 20

Respectfully yours,

A. C. MATTHEWS, Comptroller.

by J. R. Garrison, Deputy Comptroller.

Treasury Department,
 First Comptroller's Office,
 Washington, D. C., Sept. 13, 1892.

John M. McDonald, Esq.,

Assistant U. S. Attorney, Helena, Montana.

Sir: Your communication of July 7th, 1892, relative to the subject-matter is received. In answer thereto I beg leave to inform you that this office can afford you no relief whatever. It rests entirely with Mr. Weed whether or not you are to receive anything for your services as clerk in his office during the calendar year 1891. There was no understanding between this office and the Department of Justice, or between this office and Mr. Weed that you were to be paid by Mr. Weed for your services prior to the payment of any other service or expense rendered

or incurred. There is nothing to prevent a District Attorney from exercising his own discretion as to what debts he shall pay first. In any event, the expenses of his office can only be paid from the earnings of his office. As Mr. Weed received \$5837.90 during the calendar year 1891, over and above the expenses which were paid from the earnings of his office, there is nothing to prevent him from paying you out of the sum so received the amount claimed by you for your services. In fact there is nothing to prevent a District Attorney from paying out all of the earnings of his office for clerk hire, office expenses, etc., provided the Attorney-General would so approve.

Respectfully yours,
A. C. MATHEWS, Comptroller,
By J. R. Garrison, Deputy Comptroller.

Indianapolis, Ind., April 26, 1893.

John M. McDonald, Esq.,

Helena, Montana.

My Dear Sir: Your letter of April 21st is received. I should be very glad to oblige and to help you in the matter of your obtaining compensation due you from the Government, if it were practicable, but it would do no good for me to write to Attorney-General Olney, nor would I feel authorized to do so. The First Comptroller's action with reference to the allowance or disallowance of your claim is final so far

as the administrative officers of the Government go. If his action is not satisfactory the only recourse is by an appeal to the courts. You can, as you know, sue the Government in your court at Helena and have the matter determined. Under the circumstances, therefore, I do not feel warranted in writing to the Attorney-General about the matter.

Very truly yours,

W. H. H. MILLER.

Statement of Differences:

Amount charged for clerk hire, office ex- penses, etc., in attys. return,	\$4208 80
Amount allowed for clerk hire, office ex- penses, etc., in this statement,	\$2708 80
	<hr/>
Difference,	\$1500 00

Arising as follows:

First—Clerk hire of John M. McDonald from Jan. 1 to Dec. 31, 1892, disallowed.

Mr. McDonald is an Assistant U. S. Attorney and is paid an annual salary of twelve hundred dollars. Under Sec. 1765 he cannot receive any additional pay, extra allowance or compensation in any form whatever unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance or compensation. U. S. vs. King, No. 628, October Term, U. S. Supreme Court.

\$1500.

, 1st.

1891.

Gross emoluments, Jan. 1st, Dec., \$9687 80

Personal compensation, \$6000

Clerk hire, rent, etc., \$2010

\$8010

Rent, \$600

Bowers, 300

Boy, 300

Janitor, 72

Gas,

————— \$2010

\$1272 1272

\$738 probably excess on exps.

Due McDonald from Mch. to Dec. 31, \$1237.50

Paid, \$300

Paid, 308

\$608

Jersey Blue fee, \$25

Rent (50), 70

Janitor, 8 mos. 16 \$75 taken out of first payment

\$1237.50

\$629.50 due yet.

25 Jersey Blue

70 Rent

16 Janitor

\$740.50

1892.

Gross emoluments (over.)	\$11,000
Amt. charged office rent, clerk hire and expenses, et. et.,	4,208
Disallowed (1500) Actual (2708.80)	
Office rent, \$600	
Miss Bowers, 300	
Charley, 300	
Sundries (say), 100	
<hr/>	
\$1300.00	

\$2708

\$1300.00

\$1408.00 probable surplus in expenses.

Statement of Differences.

Amount charged for clerk hire, office ex- penses, etc., in emolument return	\$3307 50
Amount allowed for clerk hire, office ex- penses, etc., in this statement	2110 00
	<hr/>
Difference	\$1297 50

Arising as follows:

1. Amount paid John M. McDonald for services as Assistant Attorney, disallowed as not payable from the earnings of the Dist. Attys. Office. Congress has made specific appropriation for the payment of assistant attorneys. \$1237 50
2. Amount paid Minnie S. Bowers for a typewriter, suspended for necessity of two typewriters in your office 60 00

\$1297 50

Treasury Dept., First Comptroller's Office,
Washington, D. C., March 9, 1892.

Elbert D. Weed, Esq.,
U. S. Atty.,
Helena, Mont.:

Sir: This office is in receipt of your communication of the 24th ult., relative to suspension per report 134,705. In your communication you state that in reference to the vouchers of John M. McDonald for \$1237.50, if they were made out to him as Assistant U. S. Attorney, it was an error on his part, as he is not, officially speaking, such officer, and draws no salary as such from the U. S. He is a clerk in my office, appointed by me under directions of the Attorney-General, at a salary of \$125 per month, to be paid out of the emoluments of this office.

In answer thereto I have the honor to state that before the suspended item can be allowed you will be required to furnish a sworn statement setting forth the fact that Mr. McDonald performed clerical services only, and did not act in the capacity or perform services as Assistant Attorney. Not only are the original vouchers of Mr. McDonald made out as Assistant Attorney, but in your emolument return you enter this credit, "amount paid for clerk hire, including salary of Assistant Attorney."

You will also be required to furnish a copy of the letter received from the Attorney-General directing you to appoint Mr. McDonald, at a salary of \$125.00 per month, for it appears that you have in your em-

ploy engaged as clerks and stenographers, Miss Minnie Bowers and Genevieve Roberts and Mr. George H. Berlin.

Very respectfully yours,

A. C. MATTHEWS, First Comptroller,

By J. R. Garrison, Dept. Comptroller, T. C. F.

And thereupon said cause was submitted to the Court for determination and decision, and thereafter, and on the 19th day of November, 1894, the Court filed its opinion in writing, and his findings of fact, and conclusions of law, in the words and figures following, to-wit:

“The Court finds as follows:”

First—That from the 12th day of March, 1891, to the 31st day of December, 1891, plaintiff performed services for the United States, as clerk in the office of the United States District Attorney, for the District of Montana.

That he was employed to perform said services for the United States by E. D. Weed, the United States District Attorney for the District of Montana, and his salary was fixed at \$1500 per annum; that said Weed was duly authorized to so employ plaintiff at said salary.

Second—That plaintiff was not employed in said capacity as a clerk after December 31st, 1892, by said Weed under any authority from the Attorney-General of the United States.

As a conclusion of law: I find that plaintiff is entitled to a judgment against the United States for the sum of twelve hundred and thirty-seven and 50-100 (\$1237.50) dollars.

To which said findings of fact and conclusions of law, the defendant, by its counsel, then and there duly excepted and now presents this, its bill of exceptions, and asks that the same be signed, settled and allowed, which is done accordingly this 31st day of December, 1894.

HIRAM KNOWLES,
U. S. District Judge, District of Montana.

[Endorsed]: [Title of Court and Cause.] Bill of Exceptions. Filed Jan. 3, 1895. Geo. W. Sproule, Clerk.

And thereafter, to-wit: on the 21st day of January, 1895, the following further proceedings were had and entered of record herein in the words and figures as follows, to-wit:

[Title of Court and Cause.]

IN OPEN COURT.

On motion of U. S. Attorney defendant granted a stay of proceedings for thirty additional days to time previously granted.

And thereafter, to-wit: on the 11th day of February, 1895, the defendant herein filed its petition for a writ of error and assignment of errors, which said petition and assignment of errors is in the words and figures as follows, to wit:

*In the Circuit Court of the United States, Ninth Circuit,
District of Montana.*

JOHN M. McDONALD,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

Petition for Writ of Error.

To the Judges of the above-named Circuit Court:

Comes now your petitioner the above-named defendant, the United States, and respectfully represents that in the records, proceedings, and also in the rendition of the judgment in the above-entitled cause, which is in the said Circuit Court before you, a manifest error hath happened in the matters and things in your petitioner's bill of exceptions and its assignments of errors, filed herewith more specifically set forth, to the great injury and damage of your petitioner.

Wherefore your petitioner prays that it may please your Honors to grant unto your petitioner a writ of error to remove the said cause, and the record thereof into the United States Circuit Court of Appeals, for the Ninth Circuit, to the end that the error, if any hath happened may be duly corrected, and full and speedy justice done your petitioner, and your petitioner in duty bound will ever pray.

PRESTON H. LESLIE,

United States Attorney, Dist. of Montana.

Let the writ of error issue as herein prayed:

HIRAM KNOWLES,

U. S. District Judge.

United States Circuit Court, Ninth Judicial Circuit, District of Montana.

JOHN M. McDONALD.

Plaintiff,

VS.

THE UNITED STATES,

Defendant.

Assignments of Error.

Now comes the defendant, by Preston H. Leslie, United States Attorney for the District of Montana, and specifies the following as errors committed by the court on the trial of the above-entitled cause, and in the rendition of the judgment therein, to-wit:

I.

The Court erred in finding as a fact that from the 12th day of March, 1891, to the 31st day of December, 1891, the plaintiff performed services for the United States, as Clerk in the office of the United States District Attorney, for the District of Montana.

That he was employed to perform said services for the United States, by E. D. Weed, the United States District Attorney for the District of Montana, and his salary was fixed at \$1500 per annum.

That said Weed was duly authorized to so employ plaintiff at said salary.

II.

The Court erred in finding as a conclusion of law that the plaintiff was entitled to a judgment against the United States for the sum of twelve hundred and thirty-seven dollars and fifty cents (\$1237.50).

III.

The Court erred in giving the plaintiff judgment for the sum of \$1237.50 against the defendant, the United States.

Wherefore, defendant prays that the judgment rendered in this case may be reversed for the reasons hereinbefore set forth.

PRESTON H. LESLIE,
United States Attorney, District of Montana.

[Endorsed]: [Title of Court and Cause.] Petition for Writ of Error and Assignments of Error. Filed Feb. 11, 1895. Geo. W. Sproule, Clerk.

And thereafter, to-wit: on the 15th day of February, 1895, a writ of error and citation were duly issued, which said writ of error and citation, together with proof of service, are hereto annexed:

Writ of Error.

UNITED STATES OF AMERICA, ss.

The President of the United States of America,
To the Judges of the Circuit Court of the United
States, Ninth Circuit, District of Montana, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said U. S. Circuit Court, before you, between John M. McDonald, plaintiff, and The United States of America, defendant, a manifest error hath happened, to the great damage of the said defendant, The United States, as by his complaint appears, and it being fit

that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said U. S. Circuit Court of Appeals, for the Ninth Circuit, to be there and then held, that the record and proceedings aforesaid be inspected, the said U. S. Circuit Court of Appeals for the Ninth Circuit may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness, the Hon. MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 15th day of February, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

(Seal.)

GEO. W. SPROULE, Clerk.

The above writ of error is hereby allowed.

HIRAM KNOWLES,

U. S. Dist. Judge.

[Endorsed]: The Answer of the Judges of the Circuit Court of the United States, Ninth Circuit, for the District of Montana. The record and proceedings of

the plaintiff whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained in a certain schedule to this writ annexed, as within we are commanded. By the Court. Geo. W. Sproule, Clerk. Writ of Error. Copy deposited for the Defendant in Error in the Clerk's office, U. S. Circuit Court, District of Montana.

Citation.

UNITED STATES OF AMERICA—ss.

To John M. McDonald, greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at San Francisco, in the State of California, on the 17th day of March, 1895, pursuant to a writ of error, filed in the Clerk's office of the Circuit Court of the United States, for the District of Montana, wherein the United States is plaintiff in error, and John M. McDonald is defendant in error, to show cause, if any there be, why the said judgment in the writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties on that behalf.

Witness, the Honorable HIRAM KNOWLES, United States District Judge, District of Montana, this 15th

day of February, A. D. 1895, and of the Independence of the United States the one hundred and nineteenth.

HIRAM KNOWLES,
United States District Judge.

Received a copy of the foregoing, this 26th day of February, 1895.

J. A. CARTER.

[Endorsed]: No. 280. United States Circuit Court, District of Montana. John M. McDonald, vs. The United States. Citation. Filed March 4, 1895. Geo. W. Sproule, Clerk.

UNITED STATES OF AMERICA, }
District of Montana. } ss.

Circuit Court of the United States, Ninth Circuit, District of Montana.

Clerks' Certificate to Transcript.

I, George W. Sproule, Clerk of said Circuit Court, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 46 pages, numbered consecutively from 1 to 46 inclusive, is a true and complete transcript of the records, process, pleadings, orders, findings and conclusion, judgment and other proceedings in said cause and of the whole thereof as appear from the original records and files of said court, and I do further certify and

return that I have annexed to said transcript, and included within said paging the original citation and writ of error.

I further certify that the costs of the transcript of record amounts to the sum of \$35.30, and that the same has been made a charge against the United States.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Helena, in the District of Montana, this 9th day of March, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundredth and nineteenth.

(Seal.)

GEORGE W. SPROULE,

Clerk.

[Endorsed]: No. 225. U. S. Circuit Court of Appeals for the Ninth Circuit. The United States, Plaintiff in Error, vs. John M. McDonald, Defendant in Error. Transcript of Record. In Error to the Circuit Court of the United States for the District of Montana. Filed March 14, 1895.

F. D. MONCKTON,

Clerk.

